

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LACONIA PROPERTIES LLC.,
6220

Index No. 07 CV

Plaintiff,

-against- Honorable
 Loretta A. Preska

TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA a/k/a ST PAUL TRAVELERS
INSURANCE COMPANY,
Defendants.

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Defendant's Response to Plaintiff's Theories of Liability

The bases for the defenses asserted by defendant Travelers are set forth in its two motions *in limine* and its requests to charge. Plaintiff's theory of liability is based upon a fundamental misconception. Plaintiff relies upon cases which interpret third-party liability policies involving death and personal injury. The cases were all decided under N.Y. Insurance Law § 3420(d), which provides:


(d) If under a liability policy delivered or issued for delivery in this state, an insurer shall disclaim liability or deny coverage for death or bodily injury arising out of a motor vehicle accident or any other type of accident occurring within this state, it shall give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage to the insured and the injured person or any other claimant.

As the instant case does not pertain to a liability insurance policy and does not involve personal injury or death, Insurance Law § 3420(d) and the cases cited by Plaintiff in its statement of Theories of Liability are inapposite.

See *Brown v. State Farm Insurance Co.* 237 A.D.2d 476, 655 N.Y.S.2d 104 (2d Dept. 1997) which found that “because this case involves property insurance, Insurance Law § 3420 (d) does not apply...” See also, *Fairmont Funding, Ltd. v. Utica Mutual Insurance Co.*, 264 A.D.2d 581, 694 N.Y.S.2d 389 (1st Dept. 1999); (*Globe Indemnity Co, v. Franklin Paving Company*, 77 A.D.2d 581, 430 N.Y.S.2d 109 (2d Dept. 1980); *Vecchiarelli v. Continental Insurance Company*, 277 A.D.2d 992, 716 N.Y.S.2d 524 (4th Dept. 2000).

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